



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 05-20041-A-11
RUSS TRANSMISSION, INC.,)	Docket Control No. PP-11
Debtor.)	Sept. 26 & 27 and Oct. 5,
)	2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 26, 2006, September 27, 2006, and October 5, 2006, the court held evidentiary hearings on the motion of Kevin Nelson to value the equity interests of Kevin and Kirk Nelson in the debtor.

Daniel L. Egan and Megan A. Lewis of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, appeared for creditor Kirk Nelson; Thomas Phinney of Parkinson & Phinney appeared for the moving party, Kevin Nelson; and Thomas Willoughby of Felderstein, Fitzgerald, Pascuzzi & Willoughby appeared for the chapter 11 trustee, Hank Spacone.

Based on the evidence presented, and pursuant to Federal

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1 Rules of Bankruptcy Procedure 7052 and 9014, the court finds and
2 concludes as announced orally and on the record as well as is set
3 forth below:

4 1. On January 3, 2005, the debtor, Russ Transmission,
5 Inc., filed a voluntary chapter 11 petition. A trustee was
6 thereafter appointed pursuant to 11 U.S.C. § 1104(a)(2) on or
7 about February 18, 2005.

8 2. On August 30, 2006, creditor and shareholder Kevin
9 Nelson filed his "Motion to Value Stock of Debtor." The court
10 interprets this to be a request that it value the equity
11 interests of Kevin and Kirk Nelson in the debtor. Because the
12 debtor is being, or may be, liquidated under the terms of the
13 Second Amended Plan of Reorganization proposed by Kevin Nelson,
14 their respective equity interests must be based on the net value
15 of the corporate assets.¹

16 3. The court has subject matter jurisdiction over this
17 contested matter. See 28 U.S.C. § 1334(b). This matter is a
18 core proceeding. See 28 U.S.C. Section 157(b)(2)(A), (B), (L)
19 and (O).

20 4. The motion and notice of the hearing on the motion, as
21 well as notice of the deadline for a response to the motion, were
22 duly served on all required and necessary parties, including Kirk
23 Nelson and his attorney.

24 5. In valuing the debtor's real property in connection
25 with the proposed plan, the debtor's liquidation would be

26 ¹ This is the valuation approach taken by the parties.
27 No one attempted to argue that the debtor corporation had a
28 "going concern value" or that its "goodwill" and/or other
intangibles had any value.

1 required to make the payments called for under the "Buy-Out
2 Option." As a result, the court values the real property by
3 considering the fair market value and then deducting reasonable
4 costs of sale and all taxes occasioned by sale.

5 6. The debtor has the following material assets with the
6 following fair market values:

7 a. **Cash Accounts.** Based on the stipulation of the
8 parties, the debtor has bank accounts with balances of
9 \$2,318,994, \$96, and \$297,536.

10 b. **Lionudakis Blocked Account.** The debtor has
11 another bank account with a balance of \$397,040. This
12 bank account is subject to the disputed lien and
13 interest of Philip Lionudakis for attorneys' fees and
14 costs associated with a dispute over the secured claim
15 of Mr. Lionudakis. The maximum likely claim against
16 this blocked account is \$100,000.²

17 c. **Real Property (Dos Rios).** The debtor owns real
18 property located on Dos Rios Street, Sacramento
19 California. This real property has a fair market value
20 of \$5,000,000. The likely closing costs arising upon
21 sale would be \$400,000, and the likely income tax would
22 be \$1,806,647. Thus, the net fair market value of the
23 Dos Rios property is \$2,793,353.

24 d. **Real Property (Elvas Avenue).** The debtor owns two
25 contiguous parcels of real property located at 6671 and
26 6801 Elvas Avenue, Sacramento California. The real
27

28 ²

Of course, this is in no way binding on Mr. Lionudakis.

1 property has a value of \$2,160,000. In determining the
2 value of the Elvas Avenue Property, the court gives
3 substantial weight to the appraisal reports prepared by
4 Stover Harrington, Inc. and the testimony of Stephen L.
5 Harrington. The likely closing costs upon sale of the
6 Elvas Avenue property would be \$120,000, and the likely
7 income tax upon sale would be \$519,426. Thus, the net
8 fair market value of the Elvas Avenue property is
9 \$1,520,574.

10 e. **Real Property (Knights Landing).** The debtor owns
11 real property located in Knights Landing, California.
12 The parties stipulated that the real property has a
13 value of \$700,000. The likely closing costs upon sale
14 of the Knights Landing property would be \$56,000, and
15 the likely income tax incurred upon sale would be
16 \$39,356. Thus, the net fair market value of the
17 Knights Landing property is \$604,644.

18 f. **Effect of IGDC Interest.** Indigenous Global
19 Development Corporation (IGDC) holds a 25% interest in
20 the Dos Rios and Elvas Avenue properties. The debtor,
21 however, holds a \$2.5 million promissory note from IGDC
22 and other claims based upon the alleged breach of an
23 agreement between debtor and IGDC. The debtor's claims
24 against IGDC are likely equal to or more than the value
25 of IGDC's interest in the Dos Rios and Elvas Avenue
26 properties. The likely cost of canceling IGDC's
27 interest in the properties is \$25,000.
28

1 g. **Value of Business Assets.** The tangible assets
2 that comprise the debtor's automobile transmission
3 repair business have a fair market value of \$50,000.

4 h. **Total Value of Assets.** The total value of the
5 debtor's assets, after costs of sale and income taxes,
6 is \$7,857,237.

7 7. The debtor's liabilities are as follows:

8 a. **G.E. Capital.** The parties have stipulated that
9 the debtor is indebted to G.E. Capital in the
10 approximate amount of \$1,360,000 under a promissory
11 note secured by the Dos Rios property.

12 b. **Carrington Trust.** The parties have stipulated
13 that the debtor is indebted to the Carrington Trust in
14 the amount of \$400,000 under a promissory note secured
15 by the Knights Landing property.

16 c. **Carrington Trust.** The parties have stipulated
17 that the debtor is indebted to the Carrington Trust in
18 the amount of \$540,000 under a promissory note secured
19 by the Dos Rios and Elvas Avenue properties.

20 d. **Administrative Claims.** Current administrative
21 expenses, together with the administrative expenses
22 likely to be incurred if the proposed plan was
23 confirmed, would total \$50,387 for the trustee, \$94,867
24 for the trustee's counsel, and \$7,716 for the trustee's
25 accountant.

26 e. **Administrative Trade Payable Claims.** The debtor
27 is subject to an estimated claim of \$60,000 for
28 overpayments made by the lessee of a cell tower site on

1 the debtor's property, as well as an estimated claim of
2 \$25,000 for vendor payables.

3 f. **Pre-petition Non-Insider Claims.** The pre-
4 petition, non-insider claims total \$290,000.

5 g. **Insider Claims.** Kevin Nelson has a subordinated
6 claim of \$792,000 arising from the court-approved,
7 post-petition loan to the debtor. Kevin Nelson also
8 holds an unsecured claim in the amount of \$118,372.95,
9 and Kirk Nelson holds an unsecured claim in the amount
10 of \$143,605.

11 h. **Total Claims.** The claims asserted against the
12 debtor aggregate \$3,881,948.

13 8. The value of the debtor's assets, less the debtor's
14 liabilities, is \$3,975,289.

15 9. Kevin and Kirk Nelson each own one-half of the
16 outstanding shares of stock in the debtor.³ There is one class
17 of stock. Without the adjustment discussed below, each would be
18 entitled to \$1,987,644.50 from the liquidation of the debtor's
19 assets.

20 10. Prior to the commencement of the case the debtor
21 transferred property located on Hedge Avenue, Sacramento,
22 California to Kevin Nelson. The transfer was made for no past,
23 present, or future consideration from Kevin Nelson or anyone
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25 ³ The court makes no findings or conclusions regarding
26 any right that Ronald and Mary Ann Nelson, the parents of Kirk
27 and Kevin Nelson, may have to a portion of the stock held by Kirk
28 and/or Kevin Nelson. Ronald and Mary Ann Nelson have not filed a
proof of claim or otherwise appeared in this court, and the
resolution of the issue is unnecessary to the disposition of the
matters before the court.

1 else. While at and around the time of the transfer, the debtor
2 and Kevin Nelson intended that the debtor remain the beneficial
3 owner of the property, Kevin Nelson since has maintained that he
4 is both its record and beneficial owner. The debtor is not
5 seeking to recover the property from Kevin Nelson. Therefore,
6 because the transfer was for no consideration and was transferred
7 to Kevin Nelson because he was a shareholder of the debtor, the
8 value of the transfer, \$792,000, is a dividend. That is, it was
9 transferred to Kevin Nelson on account of his equity interest in
10 the debtor.

11 11. Kirk and Kevin Nelson had and have an equal right to
12 receive dividends from the debtor on account of their equity
13 interests in the debtor. Kevin Nelson received a \$792,000
14 dividend from the debtor. Kirk Nelson did not receive a \$792,000
15 dividend from the debtor. Therefore, Kirk Nelson also should
16 have received a \$792,000 dividend, or the \$792,000 dividend
17 should have been divided equally between Kirk and Kevin Nelson.

18 12. Because the debtor is financially unable to pay an
19 equalizing dividend to Kirk Nelson, and because the debtor will
20 be liquidated, Kevin Nelson's previous receipt of a \$792,000
21 dividend must dilute his equity in the debtor to reflect that he
22 received \$396,000 that should have been paid to Kirk Nelson.⁴

25 ⁴ The objection to claim, Docket Control No. PP-8, the
26 motion to value the stock of the debtor, Docket Control No. PP-
27 11, and Kevin Nelson's proposed plan of reorganization, all put
28 in issue the value of the equity interests of Kirk and Kevin
Nelson. Therefore, to the extent these findings and conclusions
are relevant to the disposition of these other matters, they are
incorporated by reference.

1 13. Had the \$792,000 not been paid to Kevin Nelson by the
2 debtor, on liquidation Kevin and Kirk Nelson would be entitled to
3 one-half of \$4,767,289 (\$2,383,644.50 each) rather than one-half
4 of \$3,975,289 (\$1,987,644.50 each) that now is available.

5 14. Based upon the foregoing, the court concludes that the
6 value of Kirk Nelson's equity interest is \$1,987,644.50 plus
7 \$396,000, or \$2,383,644.50; and that the value of Kevin Nelson's
8 equity interest in the debtor is \$1,987,644.50 minus \$396,000, or
9 \$1,591,644.50.⁵ The \$396,000 adjustment, representing half of
10 the \$792,000 dividend, is necessary to account for the dividend
11 paid to Kevin Nelson but not to Kirk Nelson.

12 A separate order will be entered.

13 Dated: 25 Oct. 2006

14 By the Court

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16 Michael S. McManus, Chief Judge
17 United States Bankruptcy Court
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27 ⁵ The value of Kevin Nelson's equity, \$1,591,644.50, when
28 added to the value of Kirk Nelson's equity, \$2,383,644.50, equals
the \$3,975,289 in net asset value.

CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

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Dated: October 26, 2006

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